

Message Text

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ACTION EA-09

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CINCPACAF (SJA)

CINCPACFLT (SJA)

CINCPACREPPHIL (SJA)

13 AF (CLARK) (SJA)

NLSO (SUBIC)

3 CSG (CLARK) (SJA)

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E. O. 11652: NA

TAGS: MARR, RP

SUBJECT: LEGAL AFFAIRS COMMITTEE OF THE US/RP MUTUAL DEFENSE BOARD

SUMMARY: US/RP MUTUAL DEFENSE BOARD (MDB) APPROVED FORMATION OF A COMMITTEE UNDER THE JURISDICTION OF THE MDB TO BE NAMED THE LEGAL AFFAIRS COMMITTEE (LAC). MEMBERSHIP TO BE COMPOSED OF ATTORNEYS FROM DIFFERENT DEPARTMENTS OF THE PHILIPPINE GOVERNMENT AND US MILITARY AND EMBASSY. JURISDICTION OF COMMITTEE LIMITED TO RECOMMENDING TO MDB RESOLUTION OF LEGAL PROBLEMS ENCOUNTERED IN THE INTERPRETATION AND APPLICATION OF THE MILITARY BASES AGREEMENT (MBA) AS AMENDED AND MILITARY ASSISTANCE AGREEMENT (MAA). FIRST FORMAL MEETING OF LAC HELD ON 5 NOVEMBER 75 AT SUBIC

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NAVAL BASE. END SUMMARY

1. OCT 1975 MEETING OF MUTUAL DEFENSE BOARD (MDB)
FORMALLY APPROVED THE CREATION OF THE LEGAL AFFAIRS
COMMITTEE (LAC) AS THE FOURTH COMMITTEE UNDER THE MDG.
THE OTHER FULL COMMITTEES UNDER MDB ARE (1) PLANS,
(2) INTELLIGENCE, AND (3) METES & BOUNDS.

2. IT SHOULD BE RECALLED THAT MDB WAS CREATED IN 1958 BY
AN EXCHANGE OF NOTES (TIAS 4033). AS PART OF ITS
CHARTER IT HAS THE RESPONSIBILITY FOR QUOTE THE CORRE-
LATION, IN ACCORDANCE WITH EXISTING LAWS AND OLICIES
OF THE RESPECTIVE GOVERNMENTS, OF MILITARY MATTERS OF
MUTUAL CONCERN WHICH ARISE FROM THE OPERATION OF THE ...
MBA AND THE MAA UNQUOTE AND TO RESOLVE QUOTE SUCH
PROBLEMS AS MAY ARISE IN CONNECTION WITH: (A) WORKING
RELATIONSHIPS WITH REGARD TO SPECIFIC MATTERS ENUMERATED
IN OR ARISING FROM THE MBA OF 1947...UNQUOTE. TO
BETTER ACCOMPLISH THIS TASK, IT WAS BELIEVED THAT A
COMMITTEE SHOULD BE CREATED THAT WOULD BE CHARGED WITH
RECOMMENDING SOLUTIONS TO LEGAL PROBLEMS THAT ARISE
FROM THE INTERPRETATION AND APPLIATION OF THE MBA
AS AMENDED. CONSEQUENTLY, THE U. S. CO-CHAIRMAN, WITH
THE CONCURRENCE OF THE EMBASSY, PROPOSED IN NOVEMBER
1974 THE CREATION OF A LEGAL AFFAIRS COMMITTEE.

3. FOLLOWING ACCEPTANCE OF CONCEPT BY THE GOP, THE
CO-CHAIRMAN OF THE MDB APPOINTED AN AD HOC COMMITTEE THEN
MET ON FOUR DIFFERENT OCCASIONS. IN PROCESS OF
DRAFTING TERMS OF REFERENCE, IT WAS CLEARLY UNDER-
STOOD BY BOTH PANELS THAT COMMITTEE WOULD NOT HAVE
JURISDICTION OVER POLITICAL MATTERS OR AUTHORITY TO
NEGOTIATE ANY PROVISION CONTAINED IN MBA OR MAA.

4. MAIN FUNCTION OF COMMITTEE IS SPELLED OUT IN
TERMS OF REFERENCE, TO WIT: QUOTE THE PURPOSE OF
THIS COMMITTEE IS TO STUDY AND RECOMMEND SOLUTIONS TO
AND/OR RESOLVE LEGAL QUESTIONS OR PROBLEMS ARISING
FROM THE APPLICATION, INTERPRETATION, AND IMPLEMENTATION
OF (1) THE MILITARY BASES AGREEMENT (MBA), AS AMENDED,
WITH THE EXCEPTION OF THOSE MATTERS WHICH ARE WITHIN
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THE JURISDICTION OF THE CRIMINAL JURISDICTION IMPLE-
MENTATION COMMITTEE UNDER THE 1965 AMENDMENT TO THE
MBA AND THOSE MATTERS REFERRED TO THE METES AND BOUNDS
COMMITTEE BY THE MDB; AND (2) THE MILITARY ASSISTANCE
AGREEMENT (MAA). UNQUOTE PURPOSE IS FURTHER CLARIFIED
IN STATEMENT ON FUNCTIONS OF THE COMMITTEE WHICH STATES:
QUOTE STUDY AND RECOMMEND SOLUTIONS TO AND/OR RESOLVE
LEGAL QUESTIONS OR PROBLEMS, SUCH AS, FOR EXAMPLES,

PROBLEMS OF TAXATION, IMMIGRATION, CUSTOMS, AND REGISTRATION, ARISING FROM THE APPLICATION, INTERPRETATION, AND IMPLEMENTATION OF (1) THE MILITARY BASES AGREEMENT (MBA) AS AMENDED...UNQUOTE.

5. U.S. PANEL COMPOSED OF ATTORNEYS FROM CINCPACREPPHIL, NAVY LEGAL SERVICES OFFICE (NLSO, 13 AF, 3 CSG, AND AMERICAN EMBASSY. GOP PANEL COMPOSED OF ATTORNEYS FROM AFP (JAG CORPS), JUSTICE, FOREIGN AFFAIRS AND FINANCE DEPARTMENTS. CO-CHAIRMEN ARE FROM NLSO AND AFP (JAG CORPS). ALL AGENDA ITEMS MUST BE REFERRED TO LAC BY MUTUAL AGREEMENT OF THE MDB CO-CHAIRMEN. ALL REPORTS AND RECOMMENDATIONS BY LAC MUST ALSO BE APPROVED BY MDB. CONSEQUENTLY, BESIDES THE LIMITING WORDING IN LAC'S TERMS OF REFERENCE, AGENDA ITEMS ARE FURTHER CONTROLLED BY REFERENCE AND APPROVAL PROCEDURE.

6. EMB BELIEVES LAC WILL BE USEFUL FORUM TO DISCUSS VARIOUS PROBLEMS THAT CONTINUALLY ARISE MAINLY FROM THE APPLICATION AND INTERPRETATION OF THE PROVISIONS OF THE MBA AS AMENDED. PRIOR TO THE ESTABLISHMENT OF LAC THERE WAS NO INSTITUTIONALIZED METHOD TO DISCUSS LEGAL PROBLEMS ASSOCIATED WITH THE MBA IMPLEMENTATION, EXCEPT TO REFER SUCH PROBLEMS TO THE EMBASSY, THUS UNNECESSARILY ELEVATING DAY-TO-DAY PROBLEMS IN THE APPLICATION OF THE MBA TO THE DIPLOMATIC LEVEL. THIS WAS NOT DEEMED THE MOST DESIRABLE WAY TO PROCEED AS IT OFTEN EXAGGERATED THE IMPORTANCE OF PROBLEMS WHICH COULD BE RESOLVED AT A LOWER LEVEL. THE EXPERIENCE DERIVED FROM THE OPERATION OF CRIMINAL JURISDICTION IMPLEMENTATION COMMITTEE (CJIC) AND THE SUCCESS OF THAT COMMITTEE IN DEFUSING CRIMINAL JURISDICTION PROBLEMS INDICATED THAT A FORUM TO DISCUSS OTHER LEGAL LIMITED OFFICIAL USE

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PROBLEMS NOT COVERED BY CJIC OR METES AND BOUNDS COMMITTEE OF THE MDB WOULD BE BENEFICIAL. SULLIVAN

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ACTION EA-09

INFO OCT-01 ISO-00 CIAE-00 PM-04 H-02 INR-07 L-03 NSAE-00

NSC-05 PA-01 PRS-01 SP-02 SS-15 USIA-06 ACDA-05 OMB-01

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INFO SECDEF (SJA)

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CINCPAC (SJA)

CINCPACAF (SJA)

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7. LAC CONVENED ITS FIRST MEETING ON NOV 5, 1975, AT SUBIC NAVAL STATION. FIRST MEETING REVEALED COMMITTEE'S POTENTIAL FOR HANDLING PROBLEM AREAS AND DISPELLING MISCONCEPTION ON BOTH SIDES. THREE PROBLEMS WERE DISCUSSED. THEY WERE (1) UNILATERAL RESTRICTION BY GOP CUSTOMS IN PROMULGATING RULE WHICH LIMITED IMPORTATION BY MBA PERSONNEL OF ONLY TWO HOUSEHOLD ITEMS OF EACH KIND IN HHG SHIPMENT; (2) REQUEST BY GOP FOR LIST OF PHILIPPINE CONTRACTORS AND TO REQUIRE US AUTHORITIES TO HAVE PHILIPPINE CONTRACTORS OBTAIN TAX CLEARANCE CERTIFICATES FROM GOP PRIOR TO ENTERING INTO CONTRACTS WITH USG; AND (3) WITHHOLDING PHILIPPINE INCOME TAX FROM FILIPINO EMPLOYEES AT BASES.

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8. WHILE NO FINAL RESOLUTION OF PROBLEMS WAS ATTEMPTED AT MEETING, THROUGH OPEN AND FREE-RANGING DISCUSSION, THE PANELS WERE ABLE TO CLARIFY SOME VMISCONCEPTIONS ABOUT EACH OTHERS POSITIONS, THE PROVISIONS OF THE MBA AND CUSTOMARY INTERNATIONAL PRACTICES. FOR EXAMPLE, IN RELATION TO THE CUSTOMS PROBLEM, THE PHILS EXPLAINED

THEIR RATIONALE FOR RESTRICTING HHG IMPORTATION TO TWO OF A KIND WAS BASED MAINLY ON BLACKMARKETING CONCERNS AND THEIR OPINION THAT SUCH RESTRICTION WAS A REALISTIC INTERPRETATION OF THE MBA. THE U.S. PANEL EXPLAINED THAT MBA (ART. XII) CONTAINED NO NUMERICAL RESTRICTIONS, STIPULATING ONLY THAT HHG IMPORTS MUST BE FOR PERSONAL USE. MOREOVER, CUSTOMARY US/RP PRACTICES OVER 28 YEARS REFLECTED NO SUCH RESTRICTION. IT WAS FURTHER NOTED BY U.S. PANEL THAT INTERNAL MERCHANDISE CONTROL REGULATIONS MINIMIZED THE BLACK-MARKETING PROBLEM. IN THIS CONNECTION, AT A PREVIOUS MEETING WITH CUSTOMS OFFICIALS, IT HAD BEEN POINTED OUT THAT THE USG HAD FAILED TO IMPLEMENT PORTIONS OF THE 1969 CUSTOMS AGREEMENT (TIAS 6752) WHICH REQUIRES U.S. AUTHORITIES TO PROVIDE OUTGOING INVENTORY OF HHG IN ORDER TO ACCOUNT FOR ALL HI-VALUE ITEMS INITIALLY IMPORTED OR SUBSEQUENTLY PURCHASED THROUGH EXCHANGE SYSTEM. UNDOUBTEDLY, THIS WAS IN BACK OF GOP PANEL'S MIND AT LAC MEETING. IF WE WERE TO ASSURE GOP THAT WE WILL IMPLEMENT 1969 AGREEMENT AND REINFORCE OUR MERCHANDISE CONTROL REGULATIONS, GOP MAY RESCIND ITS RESTRICTION. AS FOR AGENDA ITEM ON INCOME TAX WITHHOLDING, IT WAS MADE CLEAR THAT SUCH ACTION BY THE USG COULD ONLY BE ACCOMPLISHED THROUGH AN INTERNATIONAL AGREEMENT. PHILS URGED THAT SOMETHING BE DONE, NOTING THAT ONLY 50 PERCENT OF 16,000 PHIL EMPLOYEES AT SUBIC EVEN FILE INCOME TAX, AND THAT 50 PERCENT ALWAYS UNDERPAYS. ALTHOUGH IT WAS MADE CLEAR LAC LACKED THE AUTHORITY TO RESOLVE THIS ISSUE, WE EXPRESSED APPRECIATION OF THE PROBLEM AND SUGGESTED WE EXPLORE ISSUE FURTHER TO PERHAPS FIND ALTERNATE METHOD THAT WOULD ASSIST GOP IN COLLECTING ITS OWN TAXES. THE THIRD AGENDA ITEM, CONTRACTOR LIST AND TAX CERTIFICATE PROBLEM WAS PUT OFF UNTIL NEXT MEETING IN ORDER TO OBTAIN MORE INFORMATION AND BETTER IDENTIFY THE PRECISE PROBLEMS INVOLVED. LIMITED OFFICIAL USE

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ABOVE IS THE TYPE OF REASONED DISCUSSION THAT HOPEFULLY CAN DEFUSE PROBLEMS, CORRECT ERRONEOUS IMPRESSIONS, AND CONTRIBUTE TO MORE HARMONIOUS INTERPRETATION AND APPLICATION OF THE PROVISIONS OF THE MBA.

9. IN SUMMARY, THE FORMATION OF LAC WAS LONG OVERDUE AND HOPEFULLY IT WILL BE ABLE WITHIN ITS CAREFULLY CIRCUMSCRIBED CHARTER TO PLAY A CONSTRUCTIVE ROLE IN AMELIORATING MISUNDERSTANDINGS BETWEEN US AND RP IN THE IMPLEMENTATION OF THE MBA, AS AMENDED.
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